Consolidated Nos. 09-1454, 09-1478

In the Supreme Court of the United States

BOB CAMRETA, *Petitioner*,

v.

SARAH GREENE, personally and as next friend for S.G., a minor, and K.G., a minor, *Respondent*.

JAMES ALFORD,
Deschutes County Deputy Sheriff, *Petitioner*,

v.

SARAH GREENE, personally and as next friend for S.G., a minor, and K.G., a minor, *Respondent*.

On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE LOYOLA *CIVITAS* CHILDLAW CENTER, NATIONAL CENTER FOR YOUTH LAW, CLINICAL SOCIAL WORK ASSOCIATION, SOUTHERN POVERTY LAW CENTER, LAWYERS FOR CHILDREN, CHILDREN AND FAMILY JUSTICE CENTER, CHILDREN'S ADVOCACY CLINIC, PROF. MICHAEL S. WALD, PROF. DONALD N. DUQUETTE *ET AL.* AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES iii

INTEREST OF *AMICI CURIAE* 1

IDENTITY OF *AMICI CURIAE* 1

SUMMARY OF THE ARGUMENT 3

ARGUMENT 5

I. The Interrogation of S.G. Was a Seizure under the Fourth Amendment 5

II. In Evaluating Whether the Warrantless Seizure of a Child Was Constitutional, the Court Must Weigh the Purpose of the Seizure against Both Its Effectiveness in Advancing the State's Protective Goals and the Nature of the Individual Interests Affected 6

III. Warrantless and Excessive Interrogation of a Child in School about Alleged Familial Sex Abuse, in the Presence of an Armed and Uniformed Police Officer, Is Harmful to the Child and Does Not Advance an Important State Purpose 10

A. Ineffective Practices in the Investigation of Sex Abuse Are Harmful to Children and Impede the Successful Prosecution of Perpetrators of Abuse and Protection of Child Victims 10

B. Children are Protected by Child-Centered Practices That Encourage the Accurate and Reliable Identification of Victims of Abuse and Protect Child Victims from Further Trauma... 16

1. Interviews Should Be Conducted by Appropriate, Trained Personnel 19

2. Interviews Should Be Conducted in Neutral, Non-Intimidating Settings..... 21

3. Interviews Should Avoid Leading, Directive, or Suggestive Tactics..... 23

C. Viewed in its Entirety, the Seizure of S.G. Was Conducted in a Manner That Was Harmful to Her, Failed to Advance Any Important State Goal, and Violated Her Rights Under the Fourth Amendment..... 24

IV. The State's Interest in Protecting Children from Abuse Must Be Balanced with the Child's Right to Be Free from Unwarranted Intrusion and Interference with Her Family Relationships..... 32

CONCLUSION..... 39

APPENDIX A.....A1

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INTEREST OF *AMICI CURIAE*[1]

The organizations and individuals submitting this brief work with and on behalf of children involved with the child protection and foster care systems. They include academics, social workers, and practicing lawyers who represent children in individual child protection cases, impact litigation, and other related settings. Though they approach their work from different perspectives, *Amici* all believe that law and public policy both should place the interests of children at the heart of the resolution of any question addressing the manner in which the Fourth Amendment regulates the investigation of allegations of child abuse.

IDENTITY OF *AMICI CURIAE*

Amici are the *Civitas* ChildLaw Center of the Loyola University Chicago School of Law; the National Center for Youth Law; the Clinical Social Work Association; the Southern Poverty Law Center; Lawyers for Children (New York, New York); the Children and Family Justice Center of the Northwestern University School of Law; the Children's Advocacy Clinic of the Pennsylvania State University Dickinson School of Law; Professor

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[1] Pursuant to Sup. Ct. R. 37.6, *Amici Curiae* certify that no counsel for a party to this action authored any part of this brief, nor did any person or entity, other than *Amici*, their members, or their counsel make a monetary contribution to fund the preparation or submission of this brief. Counsel of record for the parties to this action have consented to the filing of this brief.

Michael S. Wald; Professor Donald N. Duquette; Professor Erik S. Pitchal; and Professor Paul Bennett. Statements of interest for each of them follow this brief as Appendix A.

SUMMARY OF THE ARGUMENT

Amici urge this Court to affirm the judgment of the Ninth Circuit, concluding that Petitioner Camreta's two-hour interrogation of nine-year-old S.G., conducted at her school and in the presence of an armed, uniformed police officer, constituted an impermissible seizure in violation of the child's rights under the Fourth Amendment. Because of the interrogation's "extensive entanglement" with law enforcement and the coercive circumstances arising therefrom, the Ninth Circuit correctly determined that the interrogation amounted to an unconstitutional seizure under the Fourth Amendment.

At stake in this case are not only the harms to children that arise when they are abused but also the harms to children that follow from deeply flawed state-based interventions conducted with the professed goal of protecting children from abuse. These harms include both the immediate trauma of being subjected to ill-conceived and poorly-executed interrogations and the serious collateral harms to children that arise when unreliable information procured through bad forensic practices prompts unwarranted or unsustainable interventions, including the highly disruptive placement of a child into foster care.

All these harms must be considered in evaluating the constitutionality of the seizure at issue here. Fourth Amendment jurisprudence dictates that this Court consider not only the gravity of the state's interest in protecting children from abuse but also the degree to which the seizure actually advances the state's goals and the interests

of the individual impacted by the seizure. Ineffective forensic practices in the investigation of sex abuse such as those used here, however well-intentioned, are harmful to children both in and of themselves, and because they impede the successful prosecution of perpetrators of abuse. The serious adverse consequences to children that follow when interviewers fail to follow minimum established standards relate directly to the relaxation of constitutional limits on the forced interrogation of children, thereby diminishing the weight of the state's protective interests. Moreover, a full Fourth Amendment analysis of the issues presented here compels this Court to consider not only S.G.'s right to be free from unreasonable seizures but also her right under the Fourteenth Amendment—reciprocal to that of her parents—to be free from state actions that interfere with the integrity of her family relationships without adequate cause. These concerns dictate that the seizure of S.G. should not be afforded constitutional protection. Should this Court reach the merits of Petitioners' Fourth Amendment claim, *Amici* urge this Court to affirm the conclusion of the Ninth Circuit that the seizure at issue here was unconstitutional.

ARGUMENT

I. THE INTERROGATION OF S.G. WAS A SEIZURE UNDER THE FOURTH AMENDMENT

The essential purpose of the Fourth Amendment, "as recognized in countless decisions of this Court, is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." *Camara v. Municipal Court*, 387 U.S. 523, 528 (1967). In general, the Fourth Amendment applies to any situation in which a government authority seeks to question a person in circumstances where "a reasonable person would have believed he was not free to leave." *Brendlin v. California*, 551 U.S. 249, 255 (2007). Where the person being examined is a child, the analysis must account for the child's age, circumstances, and perspective. *See Jones v. Hunt*, 410 F.3d 1221, 1226 (10th Cir. 2005); *Doe v. Heck*, 327 F.3d 492, 510 (7th Cir. 2003).

The child at the center of this case was a developmentally-disabled, nine-year-old fourth-grader with a communications disorder. J.A. at 15, 42. She was taken from her school classroom and questioned for up to two hours by a persistent investigator who aggressively sought confirmation that she had been sexually abused by her father. J.A. at 71-72. The only other adult present during this deeply personal and uncomfortable interrogation was an armed, uniformed deputy sheriff. J.A. at 70–71. Though the interrogation was conducted in school, its purpose was wholly unrelated to any

school function. No evidence suggests that this disabled child—confined to a room in a facility where it was the norm for students to follow adult instruction—felt free to leave until released by her examiner. Like the parties and the lower courts, *Amici* assume that under these circumstances, where the child was effectively captive and the protective function was inextricably intertwined with a law enforcement presence and purpose, the interrogation of S.G. was a seizure governed by the Fourth Amendment. *See* Doriane L. Coleman, *Storming the Castle to Save the Children*, 47 Wm. & Mary L. Rev. 413, 469–70, nn.169–70 (2005) (collecting cases applying Fourth Amendment to child protection investigations).

II. IN EVALUATING WHETHER THE WARRANTLESS SEIZURE OF A CHILD WAS CONSTITUTIONAL, THE COURT MUST WEIGH THE PURPOSE OF THE SEIZURE AGAINST BOTH ITS EFFECTIVENESS IN ADVANCING THE STATE'S PROTECTIVE GOALS AND THE NATURE OF THE INDIVIDUAL INTERESTS AFFECTED

The touchstone in judging claims under the Fourth Amendment is reasonableness, *Michigan v. Fisher*, 130 S.Ct. 546, 548 (2009), and "the determination of the standard of reasonableness governing any specific class of search or seizure requires 'balancing the need to search against the invasion which the search entails,'" *New Jersey v. T.L.O.*, 469 U.S. 325, 337 (1985) (quoting *Camara*, 387 U.S. at 536–537). This balancing must consider

three principal issues: (1) the gravity of the state's need for effective methods to deal with breaches of the public order, (2) the interests of the individual in safeguarding legitimate expectations of privacy and personal security, and (3) the degree to which the seizure advances the public interest. *Illinois v. Lidster*, 540 U.S. 419, 427 (2004) (citing *Brown v. Texas*, 443 U.S. 47, 51 (1979)).[2]

There can be no question of the importance of the government interest served by the investigation of reported child abuse and by the questioning of young children who are suspected victims of such abuse. This interest derives from the state's long-established obligation as *parens patriae* to protect its citizens, *see Schall v. Martin*, 467 U.S. 253, 265 (1984) (citing *Santosky v. Kramer*, 455 U.S. 745, 766 (1982)), and it amply justifies a range of systems designed to protect children from harm, provided those interventions are supported by an individualized or case-specific finding of necessity, *Maryland v. Craig*, 497 U.S. 836, 855 (1990). As

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[2] *Amici* read *T.L.O.* and its progeny as requiring consideration of each of these factors whenever a question is raised about the reasonableness of a category of searches under the Fourth Amendment. *See T.L.O.*, 469 U.S. at 337, 340–41. However, to the extent that this Court's jurisprudence commands a sequenced consideration that examines whether the state has established a "special need" prior to engaging in the kind of balancing described in *T.L.O.*, *see, e.g., Skinner v. Ry. Labor Execs.' Ass'n*, 489 U.S. 602, 619 (1989) ("When faced with such special needs, we have not hesitated to balance the governmental and privacy interests to assess the practicality of the warrant and probable-cause requirements in the particular context."), *Amici* take no position as to whether or not such a special need is presented by the facts of this case.

organizations and individuals committed to the protection of vulnerable and at-risk children, *Amici* acknowledge and fully endorse the importance of the state interest in identifying and redressing child abuse. However, as this Court has made plain, recognition of an important state purpose begins, rather than ends, the inquiry into whether a warrantless seizure violates the Fourth Amendment. *See Lidster*, 540 U.S. at 426.

Even where a seizure relates to a significant state interest, the Court must still consider the effectiveness, appropriateness, and likely consequences of the chosen tactic before condoning a particular category of state activity. State officials charged with the responsibility of investigating suspected child abuse face an exceedingly difficult challenge of balancing competing risks. On the one hand, the state's failure to identify and redress child abuse leaves vulnerable children exposed to physical and emotional harms that have lifelong consequences. On the other hand, when ill-conceived interrogations lead to state-based interventions premised on an unreliable factual foundation, the harm imposed on children—through the interview process, the unnecessary disruption of their lives and families, and the potential exposure to continuing abuse—can be every bit as severe as child abuse itself. *See* Stephen J. Ceci & Richard D. Friedman, *The Suggestibility of Children: Scientific Research and Legal Implications*, 86 Cornell L. Rev. 33, 45 (2000) (emphasizing the importance of avoiding mistakes of any kind in the investigative process).

Petitioners and their supporting *Amici* have thoroughly explored both the harm to children victimized by abuse and related concerns about systems that might fail to fully identify and redress such abuse. But they have largely ignored equally weighty concerns about harm to children ensuing directly and indirectly from bad practices, including all of the harms attendant upon the state's failure to distinguish unfounded allegations from real abuse. These harms encompass not only the immediate trauma of being subjected to ill-conceived tactics such as those used in the interrogation of S.G. but also the serious collateral harms that arise when unreliable information procured through bad forensic practices prompts unwarranted or unsustainable interventions. Petitioners similarly have not addressed the full range of children's interests at stake when they are threatened with removal from their families, including interests in family integrity guarded by the Fourteenth Amendment. All of these harms and interests must be considered in any complete analysis of whether Camreta's two-hour interrogation of nine-year-old S.G., in a closed room and in the presence of an armed and uniformed officer responsible for the criminal investigation of allegations of sex abuse, was constitutional.

III. WARRANTLESS AND EXCESSIVE INTERROGATION OF A CHILD IN SCHOOL ABOUT ALLEGED FAMILIAL SEX ABUSE, IN THE PRESENCE OF AN ARMED AND UNIFORMED POLICE OFFICER, IS HARMFUL TO THE CHILD AND DOES NOT ADVANCE AN IMPORTANT STATE PURPOSE

A. Ineffective Practices in the Investigation of Sex Abuse Are Harmful to Children and Impede the Successful Prosecution of Perpetrators of Abuse and Protection of Child Victims

The identification of children who have been victimized by abuse is undeniably a major public concern, given the well-documented and long-term adverse effects of child abuse. *See, e.g.*, Office for Victims of Crime, U.S. Dep't of Justice, *Breaking the Cycle of Violence: Recommendations to Improve the Criminal Justice Response to Child Victims and Witnesses* 3 (June 1999), *available at* http://www.ojp.usdoj.gov/ovc/publications/factshts/monograph.htm; John N. Briere & Diana M. Eliot, *Immediate and Long-Term Impacts of Child Sexual Abuse*, Future of Children, Sum.–Fall 1994, at 55.

Balanced against this concern, however, is the fact that children may also be severely harmed by poorly conducted investigations leading to inaccurate conclusions or unsubstantiated interventions:

> [b]ad interviewing can lead to serious consequences . . . includ[ing] eliciting false allegations, putting children and families through unnecessary stress,

> decreasing a child victim's credibility in court, contaminating facts, reducing probability of conviction, draining resources through unsuccessful trials and investigations, and reducing resources available for legitimate abuse cases.

Lindsay E. Cronch et al., *Forensic Interviewing in Child Sex Abuse Cases: Current Techniques and Future Directions*, 11 Aggression & Violent Behav. 195, 196 (2006), *available at* http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1005&context=psychfacpub. *See also* Sherrie Bourg Carter, Nat'l Inst. for Trial Advocacy, *Children in the Courtroom* 35 (2d ed. 2009) ("When conducted properly, interviews increase the likelihood of obtaining accurate reports from child witnesses, and thereby increase the likelihood that justice will be served. However, when conducted improperly, a host of injustices may occur, each equally as troubling and dangerous as the other."). Children questioned in coercive circumstances like those presented here are more likely to be traumatized by the process, more likely to be separated from their families without adequate cause, and more likely to be left exposed to ongoing abuse by the state's failure to generate reliable evidence from child witnesses.

First, the process itself by which state authorities seek to determine whether or not abuse has occurred can be highly traumatic to alleged child victims, regardless of whether they have actually been abused. *See Maryland v. Craig*, 497 U.S. 836, 855 (1990) (referencing the "growing body of academic literature documenting the psychological

trauma suffered by child abuse victims who must testify in court"); Jerome R. Kolbo & Edith Strong, *Multidisciplinary Team Approaches to the Investigation and Resolution of Child Abuse and Neglect: A National Survey*, 2 Child Maltreatment 61, 61 (1997) ("Harm to children occurs not only as a result of the maltreatment itself but also because of systematically insensitive procedures used to address reported maltreatment.").

One study of child victims of sexual abuse found that over half of the children who testified against their alleged abusers exhibited visible signs of distress. Gail S. Goodman et al., *Testifying in Criminal Court: Emotional Effects on Child Sexual Assault Victims*, 57 Monographs Soc'y Res. Child Dev. 1, 79, 88 (1992). Children in this study exhibited "substantial levels of disturbance" when their cases entered into the criminal justice system, and even months later the experience continued to have a negative impact on their behavior. *Id.* at 48, 51–53, 105. Other research suggests that this negative impact derives not so much from the experience of testifying in and of itself, as from "the *harshness* of the testimony experience." Office of Juv. Justice & Delinquency Prev., U.S. Dep't of Justice, *The Child Victim as a Witness* 131 (1994). These concerns thus arise whenever children are questioned closely by state officials about difficult and personal matters. *See* Tom Plach, *Investigating Allegations of Child and Adolescent Sexual Abuse* 72 (2008) ("the interview process can be potentially upsetting for the child or adolescent and can add additional stress and trauma for the victim.").

A second set of harms associated with bad forensic practices is that they may produce unreliable information leading not only to further traumatic testimonial experiences in ensuing court hearings but also to the unnecessary placement of children in foster care. There is widespread acknowledgment amongst social scientists that child witnesses generally are subject to suggestion and that interviewing techniques that fail to guard against this penchant increase the likelihood that children will provide inaccurate or false information in a forensic interview. *See, e.g.*, Cronch et al., *supra*, at 196–97; Ceci & Friedman, *supra*, at 43 ("[D]irected questioning . . . raises the problem of false positives."); Stephen J. Ceci & Maggie Bruck, *Jeopardy in the Courtroom: A Scientific Analysis of Children's Testimony* 107-25 (1995) (discussing problems inherent in multiple interviews of children); Debra Ann Poole & Lawrence T. White, *Tell Me Again and Again: Stability and Change in the Repeated Testimonies of Children and Adults*, *in* Memory and Testimony in the Child Witness 25 (Maria S. Zaragoza et al. eds., 1995) (observing that children subject to multiple interviews learn to answer questions based on what the interrogator expects); Hollida Wakefield, *Guidelines on Investigatory Interviewing of Children: What is the Consensus in the Scientific Community?*, 24 Am. J. Forensic Psych., no. 3, 2006 at 57, *available at* http://www.ipt-forensics.com/library/ajfp1.htm ("[A]lthough children are capable of providing accurate, reliable, and forensically useful information, they are vulnerable to suggestion.").

Children placed unnecessarily in foster care suffer substantial and avoidable harm from the disruption of family relationships. *See* Debra Whitcomb, U.S. Dep't of Justice, *When the Victim Is a Child* 21 (1992) ("the aftermath of disclosing child sexual abuse may be just as damaging to the victim as the abuse itself."). The experience of being placed into foster care can have significant adverse long-term consequences. *See* Vera Fahlberg, *A Child's Journey Through Placement* 166 (1991) (observing that children separated from their families and taken into interim care are prone to chronic fears and anxiety, including markedly higher incidences of a broad range of mental health and behavioral problems); June M. Clausen et al., *Mental Health Problems of Children in Foster Care*, 7 J. Child & Fam. Stud. 283, 284 (1998) ("[C]hildren in foster care are at heightened risk for mental health problems due to the negative effect of separation from their family.").

Even the brief separation of a parent and child following allegations of abuse can have profound negative repercussions on all family members. Goldstein, Freud and Solnit, authors of seminal treatises on the best interests of children, cautioned that:

> Children, on their part, react even to temporary infringement of parental autonomy with anxiety, diminishing trust, loosening of emotional ties, or an increasing tendency to be out of control. . . . When family integrity is broken or weakened by state intrusion, [the child's] needs are thwarted and his

> belief that his parents are omniscient and all-powerful is shaken prematurely.

Joseph Goldstein, Anna Freud & Albert J. Solnit, *Before the Best Interests of the Child* 9, 25 (1979). *See also* Comm. on Early Childhood, Adoption, & Dependent Care, Am. Acad. of Pediatrics, *Health Care of Young Children in Foster Care,* 109 Pediatrics 536, 539 (2002) ("Certainly, even brief separation from parental care is an unfortunate and usually traumatic event for children."); Goodman et al., *supra*, at 11 ("In stressful situations, part of children's distress may result from separation from supportive adults while at the same time being exposed to a strange, frightening environment.").

A third concern arises when bad practices are used to interrogate a child who has actually been victimized by abuse. Interrogations under such circumstances may result in evidence that is insufficiently reliable to sustain the interventions that follow, leaving children potentially exposed to continuing harm by a perpetrator. *See* Carter, *supra*, at 35 ("[B]adly conducted interviews with children who were truly abused . . . [cast] doubt on the reliability of the child's statement, thereby jeopardizing the likelihood of a conviction . . . and, in some cases, physical well-being of the child.").

To the extent that any interrogation encompassed by the Fourth Amendment exacerbates these harms, it impedes, rather than facilitates, the state's goal of protecting children. *Lidster*, 540 U.S. at 427. From the perspective of alleged child victims, constitutional doctrine and sound public policy thus both demand that the law seek to foster the use of effective and child-centered investigation techniques,

in order to maximize the prospect of reliable and constructive responses to allegations of child sexual abuse.

B. Children are Protected by Child-Centered Practices That Encourage the Accurate and Reliable Identification of Victims of Abuse and Protect Child Victims from Further Trauma

The reasonableness standard of *Lidster* demands that in light of the risks of harm to children associated with mistakes in the investigative process, state actors investigating allegations of child abuse rely, to the greatest extent possible, on established minimum standards regarding interviews with children. Over the past several decades, professionals focused on ensuring that interviews maximize reliability and minimize trauma have developed a substantial consensus on what constitutes good, child-centered forensic practice in the interviewing of suspected victims of child abuse. Federal law currently dictates the use of such standards. The Child Abuse and Prevention Treatment Act ("CAPTA") conditions federal funding for the prevention of child abuse on states' assurances that they will develop programs for the handling of such cases—particularly cases of child sexual abuse and exploitation—in a manner that limits "additional trauma to the child victim." 42 U.S.C. § 5106c(e)(1)(A). The United States Department of Justice, in guidelines adopted in 2005 following passage of the Crime Victims' Rights Act, also admonished that in the investigation and prosecution of a sex abuse, "[a] primary goal . . .

shall be to reduce the trauma to child victims and witnesses caused by their contact with the criminal justice system." Office for Victims of Crime, U.S. Dep't of Justice, *Attorney General Guidelines for Victim and Witness Assistance* 48 (May 2005), *available at* http://www.justice.gov/olp/pdf/ag_guidelines.pdf.

The principles reflected in CAPTA and the guidelines of the Attorney General are now mirrored across the professions that treat child victims. Accreditation standards produced by the National Children's Alliance ("NCA") [3] require member organizations to focus not only on fact gathering, but also on victim support and advocacy and the healing of child victims through therapeutic interventions. *See* Nat'l Children's Alliance, *Standards for Accredited Members* 14, 24 (2008) [hereinafter *NCA Standards*], *available at* http://www.nationalchildrensalliance.org/file.php/1571/Revised+Standards+for+Accredited+Members.pdf#xml=http://webinator.dvcotechnology.com/texis/search/pdfhi.txt?query=NCA+Standards+for+Accredited+Members&pr=np2cr_nca-online&prox=page&rorder=500&rprox=500&rdfreq=500&rwfreq=500&rlead=500&rdepth=0&sufs=0&order=r&cq=&rpp=10&id=4d376c6312b. The purpose of these standards is to help minimize trauma to

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[3] The NCA is a membership organization dedicated to supporting best practices surrounding the investigation and response to severe child abuse. NCA accredits Children's Advocacy Centers ("CACs") around the country and currently has more than 700 member CACs, serving some 270,000 children annually. E-mail from Cori Plotkin, Pub. Relations Consultant, Nat'l Children's Alliance, to author (Nov. 23, 2010, 11:55 CST) (on file with author).

children, both in the investigative process and through subsequent interventions. *Id.* at 3, 14, 24. *See also* Nat'l Children's Alliance, *Putting Standards into Practice: A Guide to Implementing NCA Standards for Children's Advocacy Centers* 1 (2d ed. 2004) [hereinafter, *NCA Implementation Guide*] ("The primary goal of all [Children's Advocacy Centers] is to ensure that children are not further victimized by the intervention systems designed to protect them.") The NCA Standards have been recognized by scholars and practitioners alike as reflecting a national trend. *See, e.g.*, Am. Bar Ass'n, *Report on Child Victims of Crime Resolution*, Res. 101D (Feb. 16, 2009), *available at* http://www.abanet.org/domviol/ABA_Policies/134_1_3.pdf (endorsing services and protections provided by NCA-accredited CACs); Catherine Dixon, *Best Practices in the Response to Child Abuse*, 25 Miss. C. L. Rev. 73, 80 (2005) ("The formation of multidisciplinary teams and the collaboration with Children's Advocacy Centers mirrors a national trend, which represents a new standard of best practice and a more effective response to the problem of child abuse.").

When children are questioned using appropriate techniques, the weight of modern research suggests that even very young children can be accurate witnesses. *See* Alison R. Perona et al., *Research-Based Guidelines for Child Forensic Interviews, in* Ending Child Abuse 81, 82 (Victor Vieth et al. eds., 2004) and citations therein. Minimum practice standards have thus focused on critical subjects encompassing the choice and training of interviewers, the location of interviews in a non-threatening setting, and the avoidance of

suspect and coercive techniques and questions in the actual interview.

1. Interviews Should Be Conducted by Appropriate, Trained Personnel

One of the central elements of a child-centered interview is the use of appropriate, trained personnel. The background and training of interviewers is critical to reducing trauma in the interview process, especially for young children. As recognized by several of the *Amici* supporting Petitioners, there is widespread agreement that children's needs and interests are best protected by the use of a multidisciplinary approach to child abuse investigations, allowing for the coordination of law enforcement, child protection, medical and other agencies. Theodore P. Cross et al., *Child Forensic Interviewing in Children's Advocacy Centers: Empirical Data on a Practice Model*, 31 Child Abuse & Neglect 1031, 1033 (2007). Effective multidisciplinary teams ("MDTs") permit the avoidance of repetitive questioning likely to reduce the reliability of a child's testimony as well as the engagement of social services and mental health supports capable of helping child witnesses address the trauma of both the initial interview and subsequent interventions if allegations of abuse are substantiated. *See* Kolbo & Strong, *supra*, at 62 (reviewing the benefits of MDTs, including more accurate risk assessment and prediction; improved interventions; decreased fragmentation and duplication of services, and more reliable evidence). True multidisciplinary interventions seek not only to limit repetitive questioning but also to engage

therapeutic supports for traumatized children at the outset of the process.

While effective multidisciplinary investigations often engage law enforcement, best practices strongly discourage the presence during interviews of armed, uniformed police officers. This tactic is highly intimidating, traumatizes children, and corrodes the reliability of an interview. In its practice guidelines, the American Professional Society on the Abuse of Children ("APSAC") specifically advises that "[l]aw enforcement officers should, if at all possible, arrive in unmarked cars and wear plain clothes." Am. Prof'l Soc'y on the Abuse of Children, *Practice Guidelines: Investigative Interviewing in Cases of Alleged Child Abuse* 3 (2002) [hereinafter *APSAC Guidelines*]; Plach, *supra*, at 85 (same). In a comprehensive and empirically-based report on forensic interviewing, a Michigan Governor's Task Force similarly advises that interviewers should "[a]void wearing uniforms or having guns visible during the interview." Gov.'s Task Force on Children's Justice & Dep't of Human Servs., State of Mich., *Forensic Interviewing Protocol* 6 (2003) [hereinafter *Michigan Interviewing Protocol*], *available at* http://www.michigan.gov/documents/dhs/DHS-PUB-0779_211637_7.pdf.
Indeed, wearing a gun during an interview contravenes best practices even for interrogations of adult criminal suspects. *See* Fred E. Inbau et al., *Criminal Interrogation and Confessions* 70 (4th ed. 2001).

2. Interviews Should Be Conducted in Neutral, Non-Intimidating Settings

Whenever circumstances permit, "interviews should be conducted in a safe, neutral, and preferably child-friendly environment." Cronch et al., *supra*, at 205. Increasingly, multidisciplinary investigations have been facilitated by the use of Children's Advocacy Centers ("CACs"), which serve as neutral, child-friendly settings enabling the coordination of interventions. *See* Dixon, *supra*, at 80. Other settings, such as police stations or schools, may make children feel unsafe, either because they are highly intimidating or because they draw unwanted attention to the child as officers or other officials enter school grounds. NCA Implementation Guide, *supra*, at 51; Plach, *supra*, at 85 ("Having police or child protection come to their school can feel embarrassing, violating, or frightening for some victims."). [4] For these reasons, the use of such settings is widely discouraged. NCA Implementation Guide, *supra*, at 51; APSAC Guidelines, *supra*, at 3; Am. Acad. of Child & Adolescent Psychiatry, *Practice Parameters for the Forensic Evaluation of Children*

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[4] *Amici* acknowledge that questioning children in school is a common practice, is sanctioned by law in many states, and may be preferable to alternatives such as a police station. This practice admittedly allows social workers to evaluate children promptly while avoiding the constitutional problems inherent in obtaining access to the family home. *See generally* Mark Hardin, *Legal Barriers in Child Abuse Investigations: State Powers and Individual Rights*, 63 Wash L. Rev. 493, 500–548 (1988). However, the convenience to state officials should not be misconstrued as a basis for concluding that the practice is good for children.

and Adolescents Who May Have Been Physically or Sexually Abused, 36 J. Am. Acad. Child & Adolescent Psych. Supp. 37S, 48S (Oct. 1997) [hereinafter *AACAP Practice Parameters*] (recommending use of relaxed, neutral location), *available at* http://www.aacap.org/galleries/PracticeParameters/JAACAP%20Forensic%201997.pdf; Michigan Interviewing Protocol, *supra*, at 5.

Though still small, a growing body of social science strongly suggests that the type of comprehensive, multidisciplinary approach to investigations common to the CAC model not only reduces trauma but also improves reliability, successful prosecutions, and outcomes for children. *See* Cross et al., *supra*, at 1050 ("CACs appeared to offer a more thorough and child-oriented response to child sexual abuse reports, and families appeared to have a more positive experience on average."); Paula Wolfteich & Brittany Loggins, *Evaluation of the Children's Advocacy Center Model*, 24 Child & Adolescent Soc. Work J. 333, 351 (2007) ("[L]ike other multidisciplinary teams, CACs were associated with increased substantiation of cases and a shorter investigative period than traditional child protection services"). Practice standards thus encourage the use of CACs as "the setting where the MDT is best equipped to meet the child's needs during the interview." NCA Standards, *supra*, at 12. *See also* Cronch et al., *supra*, at 205.

3. Interviews Should Avoid Leading, Directive, or Suggestive Tactics

Accepted forensic standards strongly discourage the use of interviewing tactics known to erode the reliability of information provided by children during forensic interviews. The use of certain tactics—including repetition of directive questions, selective reinforcement, guided imagery, and stereotyping—is generally understood to increase the likelihood of child witnesses providing false or inaccurate information. *E.g.*, Ceci & Friedman, *supra*, at 53–54; Wakefield, *supra*, at 57, 65–66. *See also* Task Force on Child Witnesses, Am. Bar Ass'n, *The Child Witness in Criminal Cases* 16 (2003) ("[t]he way children are interviewed . . . has a direct bearing on children's credibility, as improper interviewing may render children's descriptions of abuse unreliable.").

Concerns about the impact of repetitive questions encompass not only the repetition of interviews but also the repetition of questions within a single interview, which has been shown to significantly increase the likelihood of obtaining false information. Ceci & Friedman, *supra*, at 54 ("[N]umerous studies show that when children are exposed to these forms of suggestion the error rates can be very high, sometimes exceeding 50%."); Poole & White, *supra*, at 36 ("[I]n normal conversation, a repeated request implies that the original answer was insufficient in some way."). Other problems known to cause false reporting include an interviewer's preconceived belief that abuse in fact occurred, which can "mold the interview to elicit statements from the interviewee that are consistent

with these prior beliefs." Maggie Bruck et al., *External and Internal Sources of Variation in the Creation of False Reports in Children*, 9 Learning & Individual Differences 289, 293 (1997). Practice standards on forensic interviewing of children thus consistently urge interviewers to minimize the use of all highly leading or coercive tactics that could contaminate the child's reporting of past events. Perona et al., *supra*, at 84; NCA Implementation Guide, *supra*, at 47-48; AACAP Practice Parameters, *supra*, at 48S, 49S; Wakefield, *supra*, at 65-66.

C. Viewed in its Entirety, the Seizure of S.G. Was Conducted in a Manner That Was Harmful to Her, Failed to Advance Any Important State Goal, and Violated Her Rights under the Fourth Amendment

When all of the standards discussed above are contrasted with the seizure of S.G., it is apparent not only that it was deeply flawed, but also that the child suffered substantial and unnecessary harm as a result of these flaws. Camreta was accompanied to the interview by a uniformed deputy sheriff carrying a visible firearm. J.A. at 70, 71; S.G. Dep. 38, Furnanz Aff. Ex. C (Doc. No. 53 in Dist. Ct. Dkt.). Though a more appropriate and supportive facility (the KIDS Center) was available, J.A. at 49; *Greene v. Camreta*, 588 F.3d 1011, 1018 (9th Cir. 2009),[5] Camreta chose the more expedient course of

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[5] Ms. Greene testified that she would have consented to her daughter being interviewed at the KIDS Center. J.A. at 51.

interrupting S.G.'s school day to interrogate her, *see* J.A. at 70. He offered no justification for this choice other than his generalized and unsubstantiated view that children interrogated in schools feel safe. *Greene*, 588 F.3d at 1016. S.G. was taken out of her classroom by a school counselor, *id.* at 1017, exposing her to unwanted inquiries from her classmates. The location of the interview also isolated S.G. from therapeutic supports that might otherwise have been immediately available. All of these avoidable circumstances contravened established minimum practice standards and dramatically increased both the coercive nature of the interview and the likelihood that it would procure unreliable information.

The continuing manner in which the interview was conducted was equally problematic. The questioning lasted for as much as two hours, throughout which a uniformed sheriff remained in the room with his weapon visible to S.G. J.A. at 48, 54–55, 72. According to S.G.'s recollection, Camreta posed questions in a manner that was highly coercive; S.G. recalled that Camreta asked her the same questions over and over again, pressing her until she finally agreed that she had been touched inappropriately by her father. J.A. at 47–48, 57, 71.[6]

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[6] Though Alford had a recording device available to him, J.A. at 39, neither he nor Camreta recorded the interview, *Greene*, F.3d at 17, making careful scrutiny of their tactics impossible. *See* Wakefield, *supra*, at 61 (noting strong consensus that forensic interviews of child witnesses should be taped); Amy Russell, *Electronic Recordings of Child Investigative Interviews*, Centerpiece (Nat'l Child Prot. Training Ctr., St. Paul, Minn.), June 2009, at 1-4 (describing growing body of evidence that it is best practice to videotape

S.G.'s account strongly suggests that, rather than maintaining neutrality, Camreta persisted with directed questions until he secured answers consistent with his predetermined conclusions about Greene's guilt. *See* Carter, *supra*, at 79 ("Whatever the age, prolonging an interview beyond a child's attentional capacity increases the risk that a child will start to impulsively answer questions, accurately or not, simply to end the interview."). Based on these failings, the suggestion that the instant interrogation overall was consistent with practice standards, *see, e.g.*, Nat'l Ass'n of Soc. Workers *Amicus* Br. 25–32, simply cannot be reconciled with the facts of record.

Under these circumstances, it was predictable that the two state-based interventions that followed from S.G.'s initial interrogation—the indictment of her father and the removal of S.G. and her sister into foster care—both collapsed under the weight of unreliable information. During a subsequent interview, S.G. recanted her inculpatory statements about her father and reiterated her initial statements denying allegations of wrongdoing. *Greene*, 588 F.3d at 1019.[7] Given the problems

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forensic interviews), *available at* http://www.ncptc.org/vertical/Sites/%7B8634A6E1-FAD2-4381-9C0D-5DC7E93C9410%7D/uploads/%7B0B9329AD-C748-4012-8954-C3E8587A9865%7D.PDF.

[7] Though not directly relevant to the evaluation of her initial interrogation under the Fourth Amendment, S.G.'s account of her treatment at this subsequent interview suggests that it too was highly traumatizing. S.G. reported that she was told to undress, that the examiners looked all over her body and took pictures of her private parts, and that they used a

associated with Camreta's initial interview of S.G., there was simply no way for the KIDS Center staff either to repair the damage through subsequent questioning or to reach a definitive conclusion about the presence or absence of sex abuse. Though concerned about the possible reasons for the recantation, they could not determine whether sexual abuse had occurred. *Id.* at 1019–20. The placement of S.G. and her sister in foster care—intended to protect them from further harm—consequently ended less than three weeks later, after child protection authorities proved unable to evaluate effectively the merits of S.G.'s inculpatory statements about her father. J.A. at 67–68; *Greene*, 588 F.3d at 1019–20. Criminal charges against S.G.'s father remained pending for 18 months, with all charges relating to the alleged abuse of S.G. ultimately dropped following a hung jury and a subsequent plea agreement on another charge involving a different child. J.A. at 64; *Greene*, 588 F.3d at 1020.

For S.G., the consequences of the state's failed intervention were far from benign. This Court has indicated that in some circumstances, where the intrusive effect of a search or seizure is modest, state action that might otherwise be suspect may nonetheless be sanctioned as consistent with the Fourth Amendment. *Lidster*, 540 U.S. at 424–25 (holding that brief traffic stops aimed at gathering information about a specific crime may be permissible despite the absence of any

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magnifying glass to examine and photograph her genitals. *Greene*, 588 F.3d at 1019; J.A. at 73.

individualized suspicion). Here, however, S.G. will likely suffer substantial, long-lasting consequences arising from the interventions initiated by Camreta's interrogation. *See* Fahlberg, *supra*, at 166.

Much of the obvious harm suffered by S.G. was a function of the interrogation itself, independent of the interventions prompted by her allegation of abuse against her father. In her affidavit to the district court, S.G. stated that following the interview "my stomach felt upside down and I was confused and disoriented." J.A. at 72. S.G. attested further that she felt scared and sick to her stomach during the interview, J.A. at 54, 71, and both she and her mother attested that S.G. threw up repeatedly after returning home, J.A. at 43, 48, 49, 59, 63, 72. These reactions to the interrogation conducted by Camreta are typical of the kinds of harms often suffered by children who are closely examined about highly sensitive allegations of sex abuse. *See* Goodman et al., *supra*, at 88.

In S.G.'s case, these harms were amplified by other interventions prompted by what Respondent reasonably described as coerced disclosures. J.A. at 63. Though it lasted only for several weeks, J.A. at 68, the removal of S.G. from her family was inescapably traumatizing. The child was separated from both her father and her mother, who was not suspected of abuse. S.G.'s disclosures also prompted the removal of her younger sister from her parents' home. *Greene*, 588 F.3d at 1019. The separation must have weighed especially heavily on S.G., who plainly understood that she was responsible for turning all of their lives upside down. *Id.* at 1019–20. As is common for children who see themselves as

responsible for a forced separation from their parents, this feeling increased the likelihood of S.G. experiencing chronic guilt, sadness, and depression. Fahlberg, *supra*, at 150–51, 167. All of these presumed harms were no doubt further exacerbated by the prospect that S.G.'s father might be forced out of the home for a much longer time by a criminal conviction for abusing his daughter. Finally, the possibility remains that, as a direct result of Camreta's coercive interrogation of S.G., state officials were forced to return the child to the care of an abusive father.

Camreta's interrogation of S.G. failed to establish a legitimate basis for either the placement of S.G. and her sister into foster care, or the criminal prosecution of Greene for the alleged abuse of his daughter. The predictability of these failures arose from patent deviations from minimum standard practices in the forensic evaluation of suspected child abuse. Though it was intended to serve an important purpose, Camreta's seizure and questioning of S.G. cannot be said to have actually advanced any legitimate state goal. *See Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 47–48 (1981) (holding that state action that needlessly or erroneously separates a parent from his or her child does not serve the state's interest as *parens patriae* and must therefore be viewed as constitutionally suspect). These failures and accompanying harms, when weighed in the balance of this Court's constitutional analysis, negate Petitioners' claims that the challenged seizure actually served a legitimate state purpose and undermine their conclusion that it comported with the requirements of the Fourth Amendment.

Finally, *Amici* here urge this Court to reject the contention of Petitioners that acknowledging the violation of the Fourth Amendment that occurred here would unduly burden the state in discharging its protective function. Much of this concern arises from the presumptive extension of the Ninth Circuit's ruling to different factual scenarios that are not presented by this case and are not at issue here. Critical to the lower court's conclusion in this case was the extensive entanglement of law enforcement: though Sheriff Alford remained silent, his presence pervaded both the interview and its aftermath, including the criminal prosecution of Greene. *Greene*, 588 F.3d at 1027–29. *See also Ferguson v. City of Charleston*, 532 U.S. 67, 83–86 (2001) (finding the law enforcement purpose objective of the searches to be dispositive to the Court's conclusion that forced pre-natal drug testing violated Fourth Amendment). However, the Fourth Amendment is not necessarily implicated in every situation involving the questioning of a child by a representative of the state. The logic of the decision below does not compel the conclusion that the same constitutional requirements must apply whenever child protection investigators question children outside the presence of law enforcement or even in other settings (such as a CAC) where police officers may observe a carefully conducted child interview.

Moreover, in the vast majority of situations, child protection investigators may secure adequate and timely access to suspected child victims, either by securing parental consent, Coleman, *supra*, at 430 n.38, or by virtue of exigent circumstances obviating the need for a warrant, *see Tenenbaum v.*

Williams, 193 F.3d 581, 605 (2d Cir. 1999) (holding that exigent circumstances exist in any situation where a person of reasonable caution would believe a child to be at immediate risk of abuse without sufficient time to obtain a warrant). Many jurisdictions explicitly authorize officials to seek a warrant or a court order when they are refused access to a child. *See, e.g.*, Fla. Stat. § 39.301(13); 325 Ill. Comp. Stat. 5/7.5. Some jurisdictions allow for this recourse on an expedited basis, ensuring the state's ability to move promptly to protect children who appear to be in immediate jeopardy. *See, e.g.*, N.Y. Fam. Ct. Act § 1034(2) (providing investigators with 24-hour access to court officers able to order a parent to produce a child).

In sum, under the circumstances presented here—where an investigator chooses not to seek the consent of the non-offending parent, waits four days after learning of reported abuse, has no clearly established exigent circumstances, and wishes to engage the potentially coercive presence of law enforcement for an interview in the child's school—the interests of children are best served by acknowledging Petitioners' violation of the Fourth Amendment.

IV. THE STATE'S INTEREST IN PROTECTING CHILDREN FROM ABUSE MUST BE BALANCED WITH THE CHILD'S RIGHT TO BE FREE FROM UNWARRANTED INTRUSION AND INTERFERENCE WITH HER FAMILY RELATIONSHIPS

As noted above, the evaluation of a claim under the Fourth Amendment must account not only for the extent to which the challenged seizure actually advances the public interest but also the affected individual's interests in safeguarding her legitimate expectations of privacy and personal security. *Lidster*, 540 U.S. at 427. Here, the seizure at issue involved an interrogation of a child about the intimate details of her family life in order to, among other things, inform a decision regarding whether she ought to be separated from her parents. Such a seizure obviously implicates the child's right to be free from undue intrusions into her privacy. Both Petitioners acknowledge this right, arguing its limitations in the school context. *See* Camreta Br., at 30–34; Alford Br., at 50–53. However, because the challenged interrogation threatened the integrity of S.G.'s family, it thereby also implicated her family's substantive right to due process under the Fourteenth Amendment. *See Stanley v. Illinois*, 405 U.S. 645, 657–58 (1972) (applying the Fourteenth Amendment to state proceedings aimed at depriving a parent of the custody of his child). [8] This

[8] The Ninth Circuit noted that S.G. and her family did not raise directly on appeal a claim that the seizure at issue violated their familial rights under the Fourteenth Amendment, *Greene v. Camreta*, 588 F.3d. at 1022 n.6, notwithstanding the

interest—unrecognized by Petitioners—must also be considered if this Court is to fairly serve *all* of the interests of children impacted by the design of states' investigative processes.

Substantive due process "protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition." *Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1977). The family is the foundation of our society—"the most fundamental social institution." *Trimble v. Gordon*, 430 U.S. 762, 769 (1977). Its importance "stems from the emotional attachments that derive from the intimacy of daily association, and from the role it plays in 'promot[ing] a way of life' through the instruction of children.'" *Smith v. Org. of Foster Families for Equal. & Reform*, 431 U.S. 816, 844 (1977) (alteration in original) (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 231–33 (1972)).[9]

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possibility that a plaintiff might maintain separate claims under both the Fourth and Fourteenth Amendments, when a government's physical seizure of a child coincides with other conduct interfering with the parent-child relationship (such as a custodial interview of the child without parental consent, probable cause to suspect child abuse, or exigent circumstances), *see Doe v. Heck*, 327 F.3d 492, 518 n.23 (7th Cir. 2003). Nonetheless, to a very large extent, the family's rights under the Fourteenth Amendment inform the individual interests that must be balanced in addressing S.G.'s Fourth Amendment claim. They are thus still highly pertinent to this appeal.

[9] The integrity of the familial relationship is an interest that is protected not only by the Due Process Clause of the Fourteenth Amendment, *e.g. Meyer v. Nebraska*, 262 U.S. 390, 399 (1923), but also by the Equal Protection Clause of the Fourteenth Amendment, *e.g., Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942), the First Amendment, *e.g., Wisconsin v. Yoder*,

Federal law thus aims not only at the prevention of child abuse but also the "support for needed services to prevent the unnecessary removal of children from families." 42 U.S.C. § 5101 note (Congressional Findings).

To be sure, a parent's right to raise his or her child without state interference is necessarily limited by the state's interest in ensuring the child's welfare and safety. *Prince v. Massachusetts*, 321 U.S. 158, 166–67 (1944); *Santosky*, 455 U.S. 745, 766 (1982). However, while the family's right is not absolute, neither is the state's power to intrude on the family in the name of child protection. *Hodgson v. Minnesota*, 497 U.S. 417, 447–48 (1990) ("[W]hen the government intrudes on choices concerning the arrangement of the household, this Court has carefully examined the 'governmental interests advanced and the extent to which they are served by the challenged regulation.'" (quoting *Moore*, 431 U.S. at 499)). Due to the fundamental nature of rights associated with the family, this Court has made clear that substantive due process demands "particularly careful scrutiny of the state needs asserted to justify [the] abridgment" of such rights. *Moore*, 431 U.S. at 502 (citation omitted) (internal quotation marks omitted). *See also Troxel v. Granville*, 530 U.S. 57, 80 (2000) (Thomas, J., concurring) (urging strict scrutiny of claimed violations of familial rights).

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406 U.S. 205, 234 (1972), and the Ninth Amendment, *e.g.*, *Griswold v. Connecticut*, 381 U.S. 479, 496 (1965) (Goldberg, J., concurring).

While this Court has repeatedly affirmed constitutional protections for the rights of *parents* to guide the upbringing of their children, it has had less occasion to acknowledge the independent right of the *child* to similar protections. Nonetheless, the decisions of this and other courts make clear that the interests of children and parents in preserving the integrity of their familial relationships are shared and reciprocal. This Court in *Santosky* acknowledged this fundamental aspect of Fourteenth Amendment doctrine when it held that, absent some showing of parental unfitness, the state may not presume that children and their parents are adversaries. 455 U.S. at 760. In reaching this conclusion, Justice Blackmun stated that "the child and his parents share a vital interest in preventing erroneous termination of their natural relationship." *Id.* While this Court has never held directly that a child has the substantive right to the care, custody and companionship of his or her parent, *Michael H. v. Gerald D.*, 491 U.S. 110, 130 (1989) (reserving question), it stands to reason that such a right exists. Indeed, for nearly 90 years, this Court has suggested that a child has rights reciprocal to those of her parents. *See, e.g., Pierce v. Soc'y of Sisters,* 268 U.S. 510, 532 (1925) (considering both the "right of parents to choose schools where their children will receive appropriate mental and religious training, [and] the right of the child to influence the parents' choice"); *Prince,* 321 U.S. at 165 (finding at stake "rights of children to exercise their religion, and of parents to give them religious training").[10]

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[10] In considering claims under the Fourteenth

Amendment, the Circuit Courts have consistently treated the child's relationships with family members as not just an important interest but also an independent and enforceable right, separate and apart from that of the parent. *See, e.g., Duchesne v. Sugarman*, 566 F.2d 817, 825 (2d Cir. 1977) ("[T]he right of the family to remain together without the coercive interference of the awesome power of the state. . . . encompasses the reciprocal rights of . . . . children in not being dislocated from the emotional attachments that derive from the intimacy of daily association, with the parent. This mutual interest in an interdependent relationship has received consistent support in the cases of the Supreme Court." (citations omitted) (internal quotation marks omitted)); *Lehman v. Lycoming Cnty. Children's Svcs. Agency*, 648 F.2d 135, 152 (3d Cir. 1981), *aff'd*, 458 U.S. 502 (1982) ("Clearly, the parental interest in the companionship, care and custody of the children is a strong one and is reciprocated by the child's equally weighty interest in the nurture, love and instruction of the parents."); *Wooley v. City of Baton Rouge*, 211 F.3d 913, 923 (5th Cir. 2000) ("[A] child's right to family integrity is concomitant to that of a parent"); *Doe v. Heck*, 327 F.3d 492, 520 (7th Cir. 2003) ("Equally fundamental is the right of a child to be raised and nurtured by his parents."); *Smith v. City of Fontana*, 818 F.2d 1411, 1418 (9th Cir. 1987) ("[C]onstitutional interest in familial companionship and society logically extends to protect children from unwarranted state interference with their relationships with their parents."), *overruled on other grounds by Hodgers-Durgin v. de la Vina*, 199 F.3d 1037 (9th Cir. 1999); *Wallis v. Spencer*, 202 F.3d 1126, 1141 (9th Cir. 1999) ("The right to family association includes the right of parents to make important medical decisions for their children, and of children to have those decisions made by their parents rather than the state."); *J.B. v. Washington Cnty.*, 127 F.3d 919, 925 (10th Cir. 1997) ("[F]orced separation of parent from child, even for a short time, represents a serious impingement upon both the parents' and child's rights." (citations omitted) (internal quotation marks omitted)); *Franz v. United States*, 707 F.2d 582, 595 ("The constitutional interest in the development of parental and filial bonds free from government interference . . . . is manifested in the reciprocal rights of parent and child to one

Moreover, outside of the family context, this Court has often acknowledged that children possess fundamental rights limiting the exercise of state power. For example, this Court recently determined that a school's strip searching of a child violated her rights under the Fourth Amendment. *Safford Unified School Dist. No. 1 v. Redding*, 129 S. Ct. 2633, 2643 (2009). Other decisions have acknowledged the child's independent rights to be free from double jeopardy in juvenile court adjudications, *Breed v. Jones*, 421 U.S. 519, 531 (1975); to freedom of speech, *Tinker v. Des Moines Sch. Dist.*, 393 U.S. 503, 511 (1969); to due process in delinquency proceedings, *In re Gault*, 387 U.S. 1, 30–31 (1967); and not to be convicted on the basis of a coerced confession, *Haley v. Ohio*, 332 U.S. 596, 601 (1948). Due to children's immaturity and vulnerability, they possess even greater rights than adults in certain circumstances. *See, e.g., Graham v. Florida*, 130 S. Ct. 2011, 2034 (2010), *as modified* (July 6, 2010) (prohibiting the imposition of a life without parole sentence on a juvenile offender who did not commit homicide); *Roper v. Simmons*, 543 U.S. 551, 568 (2005) (holding that the death penalty is unconstitutional when imposed on a juvenile offender). This Court has also made clear that, "[s]tudents in school as well as out of school . . . . are possessed of fundamental rights which the State must respect." *Tinker*, 393 U.S. at 511. *See also Goss v. Lopez*, 419 U.S. 565, 584 (1975) (prohibiting the

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another's companionship." (citations omitted) (internal quotation marks omitted)).

suspension of a public school student without notice and opportunity for hearing).

In sum, when state actors seek to interrogate suspected victims of child abuse without any of the traditional safeguards of the Fourth Amendment, their conduct implicates fundamental, constitutionally protected rights and interests that belong not just to the bypassed parents, but also to the children themselves. This Court has acknowledged that the child's interest in the integrity of her relationships with family is a fundamental interest protected by the Fourteenth Amendment. Even where a claim is premised solely on the Fourth Amendment, this interest must still weigh heavily in the balance against any state interrogation of a child that is conducted in the absence of a warrant, court order, probable cause, parental consent, or exigent circumstances.

CONCLUSION

As noted at the outset of this Brief, *Amici* acknowledge and endorse the critical importance of ensuring that the state is fully equipped to investigate and respond to allegations of child sex abuse. Especially when such allegations are aimed at a child's parent, the challenges faced by the state not only are complicated, but also carry grave consequences for the children and families involved. It is vitally important for this Court to ensure that state actors have the tools necessary to achieve its protective goals. However, if an interrogation is conducted in a manner so deficient that it unnecessarily traumatizes the child and produces unreliable information that is insufficient to sustain consequent interventions, then the state has caused harm without actually advancing its protective goals. The seizure at issue here represents just such an instance. For these reasons, *Amici* urge this Court to find that it violated the Fourth Amendment and affirm the decision below.

Respectfully submitted,

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APPENDIX A

IDENTITY OF *AMICI CURIAE* AND STATEMENTS OF INTEREST

Organizations

The ***Civitas* ChildLaw Center** is a program of the Loyola University Chicago School of Law, whose mission is to prepare law students and lawyers to be ethical and effective advocates for children and promote justice for children through interdisciplinary teaching, scholarship and service. Through its ChildLaw Clinic, the ChildLaw Center also routinely provides representation to child clients in child protection proceedings and other types of cases involving children. The ChildLaw Center maintains a particular interest in the rules and procedures regulating the legal and governmental institutions responsible for addressing the needs and interests of court involved youth. It is committed to the idea that the public entities serving at-risk children and families should always seek to minimize the harm to children following from state interventions. Professor Bruce A. Boyer, counsel of record for *Amici*, is the Director of the ChildLaw Clinic and has litigated, taught, consulted, and written extensively in the area of child abuse and neglect for more than 20 years.

The **National Center for Youth Law (NCYL)** is a private, non-profit organization devoted to using the law to improve the lives of poor children nation-wide. For more than 30 years, NCYL's staff of attorneys has worked to protect the rights of low-income children and to ensure that they have the resources, support and opportunities they need to become self-sufficient adults. NCYL provides representation to children and youth in cases that have a broad impact on the systems meant to protect them. NCYL also engages in legislative and administrative advocacy to provide children a voice in policy decisions that affect their lives. As part of the organization's child welfare reform work, NCYL works to ensure the safety, stability, and well-being of abused and neglected children. NCYL's class actions in states like Arkansas, Utah, and Washington have focused on improving the child protective services policies and practices of state and local agencies.

The **Clinical Social Work Association (CSWA)** is a national professional membership organization representing social workers who specialize in providing mental health services to adults and children. The CSWA supports the profession by providing clinical training, state and national legislative advocacy on mental health issues, and information to maintain ethical practice protocols. The primary responsibility of the clinical social worker is to the individual client, the family or the group with whom he or she has a professional relationship. Clinical social workers respect the dignity, protect the welfare, and maximize the self-determination of the clients with whom they

work. Clinical social workers practice their profession in compliance with legal standards, and do not participate in arrangements or activities which undermine or violate the law. When they believe, however, that laws or community standards are in conflict with the principles and ethics of the profession, they make known the conflict and work responsibly toward change that is in the public interest.

The **Southern Poverty Law Center ("SPLC")** is a nonprofit civil rights organization dedicated to fighting hate and bigotry, and to seeking justice for the most vulnerable members of society. Founded in 1971, SPLC staff work to break the cycle of juvenile incarceration by making juvenile justice and education systems more responsive to the needs of children, families and the communities in which they live. SPLC has represented and continues to represent youngsters who are subject to unlawful arrest and excessive force at school. The organization seeks reform through public education, community organizing, litigation, legislative advocacy, training and technical assistance. SPLC is based in Montgomery, Alabama, and has offices in Atlanta, New Orleans, Miami, and Jackson, Missippi.

Lawyers for Children ("LFC"), since its founding in 1984, has safeguarded the rights of more than 40,000 young people in foster care in New York City and achieved critical reforms of the foster care system through legislative reform and as plaintiffs' counsel in class action litigation. This year, the organization will provide free legal and social work

services to children and young adults in more than 6,000 Family Court cases involving abuse, neglect, voluntary foster care placement, custody, visitation, paternity, guardianship and adoption. In addition, LFC publishes guidebooks and conducts trainings for children, legal practitioners and social workers working in the foster care system. LFC's insight into the issues raised in the instant case is borne of more than 25 years experience of interdisciplinary practice between attorneys and social workers representing children in the child welfare system.

The **Children and Family Justice Center of the Northwestern University School of Law (CFJC)** is a comprehensive children's law center that has represented young people in conflict with the law for over 20 years. In addition to its direct representation of youth and families in matters relating to delinquency and crime, school discipline, immigration/asylum, and fair sentencing practices, the CFJC collaborates with community members and with child welfare, educational, mental health and juvenile justice advocates nationwide to develop fair and effective strategies for systems reform.

The **Children's Advocacy Clinic** is an educational program of the Pennsylvania State University Dickinson School of Law. The Children's Advocacy Clinic has a dual function of providing an education to law students in the practice of law, while simultaneously providing quality legal representation and advocacy for its child clients. The Clinic receives court appointments to represent children in civil matters, specializing in child welfare practice and operates as an

inter-disciplinary law office, combining the expertise of law, social work and medicine. Students participating in the Children's Advocacy Clinic also work to address systemic child welfare issues through policy and legislative advocacy.

Individuals

Professor Michael S. Wald is the Jackson Eli Reynolds Professor of Law, Emeritus, at Stanford Law School. Professor Wald has worked on issues related to abused and neglected children for more than 40 years. He has taught courses on policy related to child maltreatment and written numerous articles and books on protecting children from maltreatment. Among his many professional activities, he was co-reporter for the American Bar Association Standards on Child Abuse and Neglect and the primary draftsman of major federal and state laws related to child maltreatment. He also has represented children in dependency proceedings in California and the District of Columbia, was Director of the San Francisco Department of Human services, which is responsible for administering child protection programs, and has served as a judge *pro tem* in many juvenile court child protection proceedings. Professor Wald also has served as Chair of the California State Committee on Child Abuse and Neglect, was a member of the United States Advisory Committee on Child Abuse, and serves as a board member of the National Committee for the Prevention of Child Abuse.

Donald N. Duquette, Clinical Professor of Law and Director, Child Advocacy Clinic, University of Michigan Law School, founded the Child Advocacy Law Clinic in 1976, the oldest such clinic in the United States. One characteristic of this clinic is that law students not only represent children alleged to be abused or neglected but also represent the county agency bringing such cases and parents accused of child abuse or neglect. This representation occurs in separate Michigan counties to avoid conflict of interest but serves to hone a more objective view of the child protection issues. In each of these advocacy roles he has a strong interest in careful, professional, and competent child maltreatment investigations. Duquette's 1990 book, *Advocating for the Child in Protection Proceedings*, formed the conceptual framework for the first national evaluation of child representation as mandated by the U.S. Congress. His most recent book, *Child Welfare Law and Practice: Representing Children, Parents and State Agencies in Abuse, Neglect and Dependency Proceedings* (Donald N. Duquette & Ann M. Haralambie eds., 2d ed. 2010), defines the scope and duties of a brand-new legal specialty in child welfare law and prepares experienced lawyers for a national certifying examination. Duquette collaborated with the National Association of Counsel for Children to develop the national certification program, which gained American Bar Association accreditation in February 2004 and is now available as a specialty in 29 U.S. jurisdictions. Duquette's research and teaching interests are in interdisciplinary approaches to child welfare law and policy. During a leave from the Law School, he managed an expert

work group for the Children's Bureau of the United States Department for Health and Human Services and drafted *Guidelines for Public Policy and State Legislation Governing Permanence for Children* (1999) as part of President Clinton's Adoption 2002 Initiative on Adoption and Foster Care. For over 25 years, Duquette was the principal legal trainer for the child protective and foster care caseworkers in Michigan, including training in legal aspects of child protection investigations. Based on all of this experience, he has a particular interest in the integrity of the investigative practices that bring children into contact with child protection systems.

Erik S. Pitchal is an assistant clinical professor of law at Suffolk University Law School in Boston and the founding director of its Child Advocacy Clinic. He has represented children in the dependency system in New York and Massachusetts and authored several publications concerning children and the law. He regularly presents training workshops to lawyers who represent children, parents, and state agencies in dependency proceedings. From this professional experience, he has an interest in ensuring that the public systems addressing allegations of abuse or neglect limit harm to children.

Professor Paul Bennett is currently Co-Director of the Child and Family Law Clinic at the University of Arizona, James E. Rogers College of Law. For the last 14 years, working with supervised law students, he has served in the Pima County Juvenile Court in Tucson, Arizona as a court-appointed lawyer or guardian *ad litem* for

children who have been removed from their homes and placed in foster care. From December 1996 until August 2009, he was the Director of the Child Advocacy Clinic at the same law college. He is a member of the Model Court Working Committee for the Pima County Juvenile Court and, as such, participates in developing policies and protocols in child protection proceedings for the Court. As someone who for years has represented children in child protection cases, he is intimately familiar with both the profound need to protect vulnerable children from child sexual abuse and the serious damage to families and children that can be caused by well-intentioned forensic interviews of children when those interviews are conducted in coercive settings, use suggestive methodologies, or are led by persons without proper forensic interview training. Reasonable oversight—whether that be parental or judicial—is absolutely necessary to protect children and families from well-meaning but poorly conducted interrogation of children.